

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

03-MDL-1570(GBD)(SN)

TERRORIST ATTACKS ON
SEPTEMBER 11, 2001

-----X

This document relates to:

Kim et al. v. Islamic Republic of Iran, No. 18-CV-11870 (GBD) (SN);
DeRubbio et al. v. Islamic Republic of Iran, No. 18-CV-05306 (GBD) (SN);
Kamardinova et al. v. Islamic Republic of Iran, No. 18-CV-05339 (GBD) (SN);
Hemenway et al. v. Islamic Republic of Iran, No. 18-CV-12277 (GBD) (SN);
Jimenez et al. v. Islamic Republic of Iran, No. 18-CV-11875 (GBD) (SN);
Rowenhorst et al. v. Islamic Republic of Iran, No. 18-CV-12387 (GBD) (SN);
O'Neill et al., v. Islamic Republic of Iran, No. 04-CV-01076 (GBD) (SN);
Aamoth et al. v. Islamic Republic of Iran, No. 18-CV-12276 (GBD) (SN);
Abel et al. v. Islamic Republic of Iran, No. 18-CV-11837 (GBD) (SN).

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO FILE
IRAN NOTICES OF AMENDMENT *NUNC PRO TUNC*

Plaintiffs by undersigned counsel submit this Memorandum of Law in Support of Motion for Leave to File Iran Notices of Amendment *Nunc Pro Tunc*, and say:

I. BACKGROUND

On July 10, 2018, the Court issued an Amended Order Approving Notices To Conform, Short Form Complaints, And Notices Of Amendment, ECF No. 4045 (the “July 10, 2018 Order”). Pursuant to the July 10, 2018 Order, “[a] new plaintiff asserting claims for solatium damages with respect to a deceased family member whose estate filed claims against Saudi Arabia or Iran before the date of this Amended Order may be added to the existing case of the decedent’s estate . . . by (1) filing a Notice of Amendment,” attached to the July 10, 2018 Order

as Exhibit E (Iran Notice of Amendment), “in the existing civil case of the decedent’s estate” *Id.* During a conference with the court held on September 23, 2019, Your Honor noted that certain Plaintiffs in the above-referenced actions had obtained default judgments against the Islamic Republic of Iran, but an Iran Notice of Amendment had yet to be filed. *See* Declaration of Jerry S. Goldman, Exhibit K, Official Transcript of Court Conference held September 23, 2018, at 3–6. As proposed at the September 23, 2019 conference, Plaintiffs seek leave to file such notices of amendment *nunc pro tunc* as of the date of the judgment received by each plaintiff listed in Exhibits A–I. *Id.*

II. ARGUMENT

The Federal Rules of Civil Procedure make clear that leave to amend the complaint should be “freely given when justice so requires.” Fed. R. Civ. P. 15(a). “This ‘permissive standard . . . is consistent with [the] strong preference for resolving disputes on the merits.’” *Media Glow Dig., LLC v. Panasonic Corp. of N. Am.*, 2018 U.S. Dist. LEXIS 207922, at *12 (S.D.N.Y. Dec. 10, 2018) quoting *Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC*, 797 F.3d at 190. Leave to amend should only be denied in “instances of futility, undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, or undue prejudice to the non-moving party.” *Burch v. Pioneer Credit Recovery, Inc.*, 551 F.3d 122, 126 (2d Cir. 2008). It is well settled that “[d]istrict courts are vested with broad discretion to grant a party leave to amend the pleadings.” *Ruggles v. Wellpoint, Inc.*, 687 F. Supp. 2d 30, 33 (N.D.N.Y. 2009).

Plaintiffs seek to amend the complaint through the Iran Notice of Amendment to add individuals as plaintiffs raising claims solely against the Islamic Republic of Iran. Because judgments against Iran were issued prior to Plaintiffs’ current motion, Plaintiffs seek leave to amend *nunc pro tunc* as of the date of judgment. *See Lewittes v. Cohen*, 2004 U.S. Dist. LEXIS

9467, at *7-8 (S.D.N.Y. May 24, 2004) (granting leave to file an amended complaint *nunc pro tunc* where the “Amended Complaint provide[d] the most complete and current account of the factual allegations, claims, and parties involved in this case”); *Vitale v. Marlborough Gallery*, 1994 U.S. Dist. LEXIS 9006, at *2 n.1 (S.D.N.Y. July 1, 1994) (granting leave to amend *nunc pro tunc*).

III. CONCLUSION

Based on the foregoing and the Court’s July 10, 2018 Order, Plaintiffs’ Motion For Leave To File Iran Notices of Amendment *Nunc Pro Tunc* should be granted.

Dated: October 2, 2019

Respectfully submitted,

/s/ Jerry S. Goldman

Jerry S. Goldman
ANDERSON KILL P.C.
1251 Avenue of the Americas
New York, New York 10020
Telephone: 212-278-1000
jgoldman@andersonkill.com

Attorney for Plaintiffs